

STATE OF MICHIGAN  
COURT OF APPEALS

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DR. SAMIR SAYEGH,

Plaintiff-Appellant,

v

TLC EYE CARE OF MICHIGAN, INC.,

Defendant-Appellee.

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UNPUBLISHED  
February 17, 2004

No. 244156  
Jackson Circuit Court  
LC No. 01-003995-CK

Before: Schuette, P.J., and Meter and Owens, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendant's motion for summary disposition in this breach of contract action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, while in medical residency training, began negotiating with defendant for employment as an ophthalmologist. The parties signed an initial letter outlining the terms of employment, with additional terms to be negotiated. Defendant subsequently mailed a formal employment agreement to plaintiff, who signed the document and returned it to defendant. Defendant did not sign the agreement. Defendant withdrew the offer of employment before plaintiff was to begin working, and plaintiff obtained employment in another state.

Since plaintiff fully mitigated his damages by accepting comparable employment, his only viable claim for damages is under the liquidated damages clause in the formal employment contract. The contract provides that for termination of the contract by defendant without cause, the physician is entitled to two months of his base compensation.

Because plaintiff's claim is premised on contract, he must show that there was mutual assent to be bound. *Rood v General Dynamics Corp*, 444 Mich 107, 118; 507 NW2d 591 (1993).

Generally, employment contracts are unilateral and may be accepted only by performance. *Sniecinski v Blue Cross & Blue Shield of Michigan*, 469 Mich 124, 138 n 9; 666 NW2d 186 (2003); *Cunningham v 4-D Tool Co*, 182 Mich App 99, 106-107; 451 NW2d 514 (1989). Defendant withdrew the offer of employment before plaintiff began working, and therefore no contract was established. Nor did defendant sign the employment agreement.

Neither plaintiff nor defendant could recover damages if the contract was repudiated before plaintiff's employment began.

Affirmed.

/s/ Bill Schuette  
/s/ Patrick M. Meter  
/s/ Donald S. Owens